



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 30, 2004

Mr. Kevin D. Pagan  
Deputy City Attorney  
City of McAllen  
P. O. Box 220  
McAllen, Texas 78505-0220

OR2004-2498

Dear Mr. Pagan:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 198473.

The City of McAllen (the "city") received a request for information pertaining to grievances and responses to grievances filed, suspensions of city fire and police uniform personnel, and suspensions and letters of reprimands of city personnel for specified periods of time. You indicate that you have released some of the requested information to the requestor. You claim, however, that the remaining requested information is excepted from disclosure pursuant to section 552.101 of the Government Code. We have considered the exception you claim and have reviewed the submitted information.

Initially, we note that portions of the submitted information, which we have marked, are not responsive to the request for information. Accordingly, we conclude that the city need not provide the requestor with these marked portions of the submitted information in response to this ruling.

You claim that portions of the remaining submitted information are excepted from disclosure pursuant to section 552.101 of the Government Code. Section 552.101 excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. *See* Gov't Code § 552.101; *see also* Open Records Decision Nos. 611 at 1 (1992) (relating to common-law privacy), 600 at 4 (1992) (relating to constitutional privacy), 478 at 2 (1987) (relating to statutory confidentiality). We note that

the city has not asserted any law, and we are not aware of any law, that makes any portion of the remaining submitted information confidential under section 552.101. Accordingly, we conclude that the city may not withhold any portion of the remaining submitted information under section 552.101 of the Government Code.

We also note that portions of the remaining submitted information may be excepted from disclosure pursuant to section 552.117(a)(1) of the Government Code. Section 552.117(a)(1) excepts from disclosure the home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who timely request that this information be kept confidential under section 552.024 of the Government Code. *See* Gov't Code § 552.117(a)(1). However, information that is responsive to a request may not be withheld from disclosure under section 552.117(a)(1) if the employee did not request confidentiality for this information in accordance with section 552.024 or if the request for confidentiality under section 552.024 was not made until after the request for information was received by the governmental body. Whether a particular piece of information is public must be determined at the time the request for it is received by the governmental body. *See* Open Records Decision No. 530 at 5 (1989). Accordingly, to the extent that the individuals with whom the marked section 552.117(a)(1) information is associated elected confidentiality for this information prior to the date that the city received this request for information, we conclude that the city must withhold this marked information pursuant to section 552.117(a)(1) of the Government Code.

We also note that portions of the remaining submitted information are excepted from disclosure pursuant to section 552.136 of the Government Code. Section 552.136 provides:

(a) In this section, "access device" means a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to:

- (1) obtain money, goods, services, or another thing of value; or
- (2) initiate a transfer of funds other than a transfer originated solely by paper instrument.

(b) Notwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.

Gov't Code § 552.136. Accordingly, we conclude that the city must withhold the account numbers that we have marked pursuant to section 552.136 of the Government Code.

In summary, to the extent that the individuals with whom the marked section 552.117(a)(1) information is associated elected confidentiality for this information prior to the date that the city received this request for information, we conclude that the city must withhold this marked information pursuant to section 552.117(a)(1) of the Government Code. The city must withhold the account numbers that we have marked pursuant to section 552.136 of the Government Code. The city must release the remaining submitted information that is responsive to the request for information to the extent that the city has not already done so.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or

complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, reading "Ronald J. Bounds". The signature is written in a cursive, flowing style.

Ronald J. Bounds  
Assistant Attorney General  
Open Records Division

RJB/lmt

Ref: ID# 198473

Enc. Marked documents

c: Dr. Anthony Rogers  
8506 Chivalry  
San Antonio, Texas 78254  
(w/o enclosures)